

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN SHAW aka JOHN HSIA,
Plaintiff,
v.
OFFICER CHANG,
Defendant.

No. C 13-2532 NC (PR)

**ORDER DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL; REJECTING
PLAINTIFF'S REQUEST TO
"REJECT" SUMMARY JUDGMENT
MOTION**

(Docket No. 54)

Plaintiff has requested that counsel be appointed to assist him in this action. A district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See id. Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under section 1915(e)(1). Here, exceptional circumstances requiring the appointment of counsel are not evident. The request for appointment of counsel is therefore DENIED.

Plaintiff has also requested that the Court "reject" Defendant's pending motion for summary judgment as untimely filed. The request is DENIED as frivolous. By Order

1 entered May 15, 2014, the Court directed Defendant to file his motion for summary judgment
2 within fifty-six days. Defendant's motion for summary judgment filed July 9, 2014, i.e., less
3 than fifty-six days later, is therefore timely. Plaintiff is reminded that his opposition is
4 currently due on or before August 6, 2014.

5 This Order terminates Docket No. 54.

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7 IT IS SO ORDERED.

8 DATED: July 23, 2014

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NATHANAEL M. COUSINS
United States Magistrate Judge